

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

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ZANDRA THORNTON,

Plaintiff,

vs.

JC PENNY COMPANY, INC., et al.,

Defendants.

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

REQUEST TRIAL BY JURY

CIVIL ACTION NO.

CV 1:06CV162-WKW

ANSWER OF DEFENDANT

COME NOW the Defendant JC Penny Company, Inc. ("JC Penny") and in answer to the Complaint, says as follows:

FIRST DEFENSE

1. JC Penny admits the allegations of paragraphs 1-4 of the Complaint.
2. JC Penny does not have sufficient information to either admit or deny the remaining allegations of the Complaint, and therefore, J.C. Penny must deny them at this time.

SECOND DEFENSE

The Complaint fails to state a cause of action against JC Penny upon which relief can be granted.

THIRD DEFENSE

JC Penny denies the material allegations of the above not specifically admitted, and demand strict proof thereof.

FOURTH DEFENSE

JC Penny pleads the general issue.

FIFTH DEFENSE

JC Penny pleads assumption of the risk.

SIXTH DEFENSE

JC Penny pleads superceding or intervening cause.

SEVENTH DEFENSE

JC Penny states the Plaintiff is barred from recovery by the doctrine of contributory negligence or assumption of the risk.

EIGHTH DEFENSE

JC Penny pleads accord and satisfaction.

NINETH DEFENSE

JC Penny pleads the affirmative defense of judicial estoppel and lack of standing.

TENTH DEFENSE

The Plaintiff cannot prove the elements necessary for any of his claims against this Defendant.

ELEVENTH DEFENSE

The plaintiff has failed to mitigate her damages.

TWELFTH DEFENSE

JC Penny denies the Plaintiff's assertions regarding his alleged injuries or damages and denies that the Plaintiff was injured or damaged to the extent claimed.

THIRTEENTH DEFENSE

The injuries and damages to the Plaintiff were not the proximately caused by any negligence on the part of the defendant.

FOURTEENTH DEFENSE

Any unsafe or hazardous conditions that existed at the time of Plaintiff Zandra Thornton's fall were open and obvious to Zandra Thornton, such that Plaintiff cannot recover from this Defendant. This Defendant denies that there were any defects in the premises caused by any actions or inactions on the part of this Defendant.

FIFTEENTH DEFENSE

The Plaintiff's injuries and damages were the proximate result of the conduct and/or wrongful conduct of other Defendants or non-parties to this lawsuit.

SIXTEENTH DEFENSE

JC Penny reserves the right to amend or supplement this answer.



RICHARD E. BROUGHTON
ERIS BRYAN PAUL
Attorney for JC Penny Company, Inc.

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the following counsel of record:

Hon. Stephen R. Hamner
Post Office Box 7111
Dothan, AL 36302

by placing same in the U.S. mail postage prepaid on this the 21 day of February, 2006.



OF COUNSEL